

§ 792.102 Applicability.

(a) This part applies to a PHA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the PHA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud recoveries are obtained through litigation brought by the PHA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of a PHA administrative grievance procedure pursuant to, or incorporating the requirements of, § 982.555 of this title. This part does not apply to cases of owner fraud in PHA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the PHA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a criminal proceeding obtained on or after October 8, 1986, and to all tenant and owner fraud recoveries obtained through administrative repayment agreements signed on or after October 28, 1992.

[59 FR 9409, Feb. 28, 1994, as amended at 64 FR 26640, May 14, 1999]

§ 792.103 Definitions.

Fraud and abuse. Fraud and abuse means a single act or pattern of actions:

(1) That constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead; and

(2) That results in payment of section 8 program funds in violation of section 8 program requirements.

The terms *Public Housing Agency (PHA)* and *Indian Housing Authority (IHA)* are defined in 24 CFR part 5.

Judgment. Judgment means a provision for recovery of section 8 program funds obtained through fraud and abuse, by order of a court in litigation or by a settlement of a claim in litigation, whether or not stated in a court order.

Litigation. A lawsuit brought by a PHA to recover section 8 program funds obtained as a result of fraud and abuse.

Principal party in initiating or sustaining an action to recover. Principal party in initiating or sustaining an action to recover means the party that incurs more than half the costs incurred in:

(1) Recertifying tenants who fraudulently obtained section 8 rental assistance;

(2) Recomputing the correct amounts owed by tenants; and

(3) Taking needed actions to recoup the excess benefits received, such as initiating litigation.

Costs incurred to detect potential excessive benefits in the routine day-to-day operations of the program are excluded in determining the principal party in initiating or sustaining an action to recover. For example, the cost of income verification during an annual recertification would not be counted in determining the principal party in initiating or sustaining an action to recover.

Public housing agency (PHA). A public housing agency as defined in § 791.102.

Repayment agreement. Repayment agreement means a formal document signed by a tenant or owner and provided to a PHA in which a tenant or owner acknowledges a debt, in a specific amount, and agrees to repay the amount due at specific time period(s).

[59 FR 9409, Feb. 28, 1994, as amended at 61 FR 5212, Feb. 9, 1996; 64 FR 26640, May 14, 1999]

Subpart B—Recovery of Section 8 Funds

§ 792.201 Conduct of litigation.

The PHA must obtain HUD approval before initiating litigation in which the PHA is requesting HUD assistance or participation.